

MINUTE ITEM

File Calendar Item No. 2  
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 meeting.

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12/22/82  
 RW 22581  
 Taylor  
 Saggese  
 Patterson  
 Fossum  
 Horn

CONSIDERATION OF DETERMINATIONS  
 UNDER PUBLIC RESOURCES CODE SECTION 6702  
 RELATIVE TO PARAGRAPH 4 "10(b)" OF  
 THE THIRD AMENDMENT TO  
 THE QUEEN MARY LEASE BETWEEN  
 THE CITY OF LONG BEACH  
 (BOARD OF HARBOR COMMISSIONERS) AND  
 WRATHER PORT PROPERTIES, LTD.

BACKGROUND:

On November 17, 1980, the State Lands Commission (Commission) made the findings set forth in Public Resources Code Section 6702, regarding a lease between the City of Long Beach Board of Harbor Commissioners (City) and Wrather Port Properties, Ltd. (Wrather). The lease premises include the Queen Mary, about 45 acres of adjacent land and approximately eight acres of submerged lands. Included within the lease was an option for Wrather to lease and develop 235 acres of submerged land contiguous to the Queen Mary site (Option Area).

Lease purposes approved by the Commission at that time included:

- (a) Maintenance and development of a maritime tour on the Queen Mary.
- (b) Development of a first class hotel or hotels including restaurants, cocktail lounges, function rooms, retail shops, parking facilities, and other related uses to accommodate tourists.

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- (c) Development and operation of a small boat marina within the Option Area.
- (d) Development and operation of an exhibit of the H.K.I. (Hughes Flying Boat).
- (e) Operation of the Queen Mary Plant (heating and chilled water).

The lease also provides that Wrather has the right to further develop the lease premises to provide additional exhibit areas and facilities, hotel rooms, restaurants, meeting rooms, retail shops, office and other related facilities provided that any such further development shall (i) be made only with prior approval of the Board; (ii) shall not interfere with commerce, navigation or fisheries or be inconsistent with the trusts and conditions upon which the premises are held by the City; and (iii) conform to all applicable restrictions and limitations imposed by zoning ordinances of the City of Long Beach and the Port Master Plan approved by the California Coastal Commission.

Significantly, the Commission made no P.R.C. Section 6702 findings regarding the Option Area at that time.

On January 26, 1981, the Commission made additional findings on the lease. At that time, it approved certain uses that could be made on the lease premises and Option Area. These were uses authorized in the Long Beach Port Master Plan, which plan had been adopted by the City and approved by the California Coastal Commission. The findings were made on the proviso that the Commission be a co-lead agency with the City in the preparation of an environmental impact study for the lease and Option Area. The execution of a Memorandum of Understanding was also authorized to effectuate the requirement that the environmental study be conducted on this basis.

On March 23, 1982, the Commission made P.R.C. Section 6702 findings regarding the First Amendment to the City/Wrather lease. The First Amendment changes were relatively non-substantive and included some rental language changes previously required by the Commission.

#### CURRENT SITUATION:

In January 1982, Wrather submitted to the City a conceptual plan for the development of the lease premises and the Option Area. Included in the plan were proposals for several office buildings, the development of a number of time interval

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resort units and an international marine institute. At that time, the City did not approve these uses because they did not conform to Long Beach zoning ordinances and the Port Master Plan.

In October of this year the City did approve, with conditions, a Second Amendment to the City/Wrather lease. This Second Amendment, submitted to the Commission for approval on October 4, 1982, essentially provides for:

- (a) the extension of certain dates within the agreement regarding development decisions, and deferrals and offsets to rental payments (paragraphs 1-9), and;
- (b) the expansion of the authorized uses that may be made of the lease premises and Option Area to include resort time interval interests, office buildings and any other uses subsequently agreed upon by the City and Wrather (paragraphs 10 and 11).

The first part of the Second Amendment (paragraphs 1-9) was given P.R.C. Section 6702 approval by the Commission, subject to certain qualifications, on October 8, 1982. The Commission declined at that time to approve paragraphs 10 and 11.

Since the Commission action in October, discussions have continued among representatives of Wrather, the City of Long Beach, the Office of the Attorney General, and State Lands Commission staff involving paragraphs 10 and 11 of the Second Amendment. These discussions have resulted in agreement among the above parties as to the modification of paragraph 10(b) of the Second Amendment. This modification has been included in a Third Amendment to the Queen Mary Lease, approved by the City of Long Beach through its Board of Harbor Commissioners on December 20, 1982. Paragraph 4 of the Third Amendment amends and supersedes paragraph 10(a), (b) and (c) of the Second Amendment, but it is only that portion of paragraph 4 which amends and supersedes paragraph 10(b) of the Second Amendment that concerns the Commission today (hereinafter 4 "10(b)").

Paragraphs 10 and 11 of the Second Amendment having been superseded, Wrather has withdrawn its request for Commission approval of said paragraphs and now requests P.R.C Section 6702(b)(1) approval of paragraph 4 "10(b)" of the Third Amendment only. It should be noted that since no agreement as to paragraphs 4 "10(a) and (c)" was reached during the above mentioned discussions, approval of these paragraphs

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is specifically not being sought. Consequently, only paragraph 4 "10(b)" of the Third Amendment to the Queen Mary Lease relating to office building use is now before the Commission.

Wrather has requested that the Commission consider the materials submitted in connection with the Second Amendment as materials in support of the item before the Commission today. Hereafter, these data, along with staff memoranda, shall be referred to as "supplemental material". Included in the supplemental material are:

- (a) Letter submission by Wrather to the City dated January 21, 1982, containing Wrather's proposed Master Plan for the lease premises and Option Area.
- (b) Wrather application to the City for requisite permits.
- (c) Letter to Einar C. Petersen, Senior Deputy City Attorney, dated March 17, 1982, from James M. O'Hearn, project consultant for Wrather, responding to time share resort use.
- (d) Memo to Board of Harbor Commissioners, dated March 18, 1982 from H. L. Sellers, its Assistant Executive Director, recommending conditional approval of conceptual plan.
- (e) Letter to Claire Dedrick dated March 26, 1982, from Richard Stevens, President of Wrather concerning elements of the Wrather development.
- (f) Letter to Einar C. Petersen, dated April 4, 1982, from Susanne C. Wylie, Deputy Attorney General, requesting further information on office use and time interval resort use.
- (g) Letter to Claire Dedrick, dated June 9, 1982, from Richard Stevens, regarding the Baltimore Inner Harbor Development.
- (h) Letter to Einar Petersen, dated September 16, 1982, from Richard Stevens, responding to some issues raised by Susanne Wylie's April 6, 1982 letter.
- (i) Letter to N. Gregory Taylor, Assistant Attorney General, dated September 27, 1982, from Einar C. Petersen responding to time share uses.

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- (j) Application of City/Wrather to State Lands Commission dated October 4, 1982, requesting P.R.C. Section 6702 approval of Second Amendment.
- (k) Revised Queen's Bay Development Plans presented to staff on November 10, 1982.
- (l) Corrected copy of letter to James F. Trout, Assistant Executive Officer of the State Lands Commission, dated November 23, 1982, from Barna S. Szabo, V. P. Wrather, transmitting Wrather Development Phasing Plan.
- (m) Letter to Board of Harbor Commissioners, dated December 1, 1982, from Michael J. Downs, President of Wrather Port Properties, requesting Board consideration of revised plan.
- (n) Legal memoranda to N. Gregory Taylor, from Deputies Nancy Saggese and Timothy Patterson, dated December 1, 1982, regarding propriety of office space and time share projects on tidelands.
- (o) Third Amendment to Queen Mary Lease between City and Wrather.
- (p) Letter to State Lands Commission from Wrather withdrawing request for P.R.C. Section 6702 approval of paragraphs 10 and 11 of the Second Amendment and requesting approval of paragraphs 4 "10(b)" of the Third Amendment.

The Master Plan process required by the City/Wrather lease presents a unique procedural problem to the Commission in making P.R.C. Section 6702 findings. The statute provides, inter alia, that the Commission shall make a finding that the lease is in the best interests of the State. The Commission has adopted regulations which set the criteria that must be met in order for the Commission to make this finding. Among items to be considered by the Commission are:

- (a) Consistency with Commission policies, practices, and procedures for administering lands within its jurisdiction;
- (b) Economic viability, necessity and desirability;
- (c) Appropriateness for developmental mix;
- (d) That the development is conducive to public access;

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(e) Consistency with environmental protection.

By its very nature, a conceptual development plan does not contain the requisite specificity to meet all the above criteria. Since these criteria cannot be met at this time, the Commission cannot make the P.R.C. Section 6702(b)(3) finding.

As set forth above, staff of the State Lands Commission and the Office of the Attorney General have been meeting with representatives of Wrather and the City regarding procedures and lease covenants that will allow Wrather to proceed with planning and public review of a development project that may contain office building use of the lease premises and Option Area in addition to the uses previously approved by the Commission on November 17, 1980, and January 26, 1981. The lease covenants and proposed Commission findings together set forth requirements that must be followed in order to construct marine or maritime office buildings consistent with the City's trust grant and the common law public trust within the overall project.

Procedurally, it now appears necessary for the Commission to bifurcate its P.R.C. Section 6702 findings. The Attorney General has advised the Commission that such a bifurcation is not inconsistent with law.

The procedure that staff is recommending consists of making a finding under P.R.C. Section 6702(b)(1) -- a finding that paragraph 4 of the Third Amendment to the Queen Mary Lease, to the extent that it amends and supersedes paragraph 10(b) of the Second Amendment to the Queen Mary Lease (4 "10(b)"), is in accordance with the terms of the grant under which title to the land in question is held by the City.

A finding under P.R.C. Section 6702(b)(3) -- a finding that the lease is in the best interests of the State, can only be made at some future time after more specific information is submitted.

AB 884: N/A.

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE NATURE OF THE WRATHER CONCEPTUAL PLAN OF DEVELOPMENT FOR THE LEASE PREMISES AND THE OPTION AREA IS OF SUCH A SCALE, CONTINGENT UPON THE DEVELOPMENT OF A DETAILED PLAN EXTENDING OVER A NUMBER OF YEARS,

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AND SUBJECT TO SUCH FACTORS AS THE MODIFICATION OF THE PORT MASTER AND CITY\* GENERAL PLAN, COMPLETION AND CERTIFICATION OF ENVIRONMENTAL DOCUMENTS, AND ECONOMIC AND LEGAL CONSIDERATIONS, THAT IT WILL BE NECESSARY FOR THE COMMISSION TO MAKE A SERIES OF PUBLIC RESOURCES CODE SECTION 6702 FINDINGS OVER A PERIOD OF YEARS.

2. FIND THAT DEVELOPMENT OF APPROPRIATE TRUST RELATED USES ON THE LEASE PREMISES AND OPTION AREA HAS BEEN APPROVED IN CONCEPT BY THE COMMISSION AND THAT THE QUEEN'S BAY DEVELOPMENT CONCEPT PROPOSED BY WRATHER IN ITS SUBMITTAL OF NOVEMBER 10, 1982, IS MERITORIOUS TO THE EXTENT THAT IT PROVIDES USES WHICH ARE CONSISTENT WITH THE CITY'S TRUST GRANT, AND SHOULD PROCEED THROUGH THE PUBLIC AND ENVIRONMENTAL REVIEW PROCESS.
3. FIND THAT APPROVAL, UNDER PUBLIC RESOURCES CODE SECTION 6702(b)(1), OF THE THIRD AMENDMENT TO THE QUEEN MARY LEASE BETWEEN THE CITY AND WRATHER, WHICH AMENDMENT IS ON FILE IN THE PRINCIPAL OFFICE OF THE COMMISSION AND BY THIS REFERENCE IS MADE A PART HEREOF, IS NOT A PROJECT WITHIN THE MEANING OF CEQA AND THE STATE CEQA GUIDELINES AND THEREFORE DOES NOT REQUIRE THE PREPARATION OF ENVIRONMENTAL DOCUMENTS.
4. MAKE THE DETERMINATION UNDER PUBLIC RESOURCES CODE SECTION 6702 (b)(1) THAT PARAGRAPH 4 OF THE THIRD AMENDMENT, TO THE EXTENT THAT IT AMENDS AND SUPERSEDES PARAGRAPH 10(b) OF THE SECOND AMENDMENT (4 "10(b)"), IS IN ACCORDANCE WITH THE TERMS OF THE GRANT UNDER WHICH TITLE TO THE LANDS IN QUESTION IS HELD BY THE CITY OF LONG BEACH. SUBJECT TO THE CONDITIONS SET FORTH IN (a), (b) AND (c) BELOW:
  - (a) A MARKET STUDY MEETING THE REQUIREMENTS PROVIDED FOR IN PARAGRAPH 4 "10(b)" SHALL BE SUBMITTED TO AND APPROVED BY THE STATE LANDS COMMISSION PRIOR TO COMMENCEMENT OF CONSTRUCTION OF ANY OFFICE BUILDING ON THE LEASE PREMISES OR OPTION AREA.
  - (b) A LEASING PROGRAM AND THE BUDGET THEREFOR SUCH AS THAT PROVIDED FOR IN PARAGRAPH 4 "10(b)" SHALL BE SUBMITTED TO AND APPROVED BY THE STATE LANDS COMMISSION PRIOR TO THE COMPLETION OF CONSTRUCTION OF EACH OFFICE BUILDING ON THE LEASE PREMISES OR OPTION AREA.
  - (c) THE OFFICE LEASE STATEMENTS PROVIDED FOR IN PARAGRAPH 4 "10(b)" SHALL BE MADE AVAILABLE TO THE STATE LANDS COMMISSION STAFF UPON REQUEST.

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5. FURTHER FIND THAT IN MAKING THE DETERMINATION IN FINDING 4 ABOVE, THE COMMISSION DOES SO WITHOUT PREJUDICE TO ITS FUTURE DELIBERATIONS AND FINDINGS UNDER PUBLIC RESOURCES CODE SECTION 6702 (b)(2) AND (3) RELATIVE TO WRATHER'S QUEEN'S BAY DEVELOPMENT PROJECT. THIS ACTION OF THE COMMISSION SHALL NOT BE DEEMED TO BE AN APPROVAL OF ANY MATTERS CONTAINED IN THE SECOND AMENDMENT, NOT PREVIOUSLY APPROVED BY THE STATE LANDS COMMISSION, OR ANY MATTERS CONTAINED IN THE THIRD AMENDMENT, OTHER THAN PARAGRAPH 4 "10(b)" THERETO, NOR IS IT APPROVAL OF ANY MATTER CONTAINED IN THE SUPPLEMENTAL MATERIAL SUBMITTED BY THE CITY/WRATHER IN SUPPORT OF THIS ITEM.
6. DIRECT STAFF AND THE OFFICE OF THE ATTORNEY GENERAL TO CONTINUE WORKING WITH THE CITY AND WRATHER TO DEVELOP PLANS AND LEASE COVENANTS THAT WILL PERMIT FURTHER DEVELOPMENT OF THE QUEEN'S BAY PROJECT WITH USES CONSISTENT WITH THE PUBLIC TRUST.